

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 27, 2007.

**John B. Askew,**  
Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart R—Kansas**

■ 2. In § 52.870(e) the table is amended by adding an entry at the end of the table to read as follows:

**§ 52.870 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED KANSAS NONREGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(31) Maintenance Plan for the 8-hour ozone standard in the Kansas portion of the Kansas City area.	Kansas City	5/23/07	8/9/07 [insert FR page number where the document begins].	This plan replaces numbers (28) and (29).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R05-OAR-2007-0001; FRL-8451-9]

**Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Toledo Area 8-Hour Ozone Nonattainment Area to Attainment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Ohio Environmental Protection Agency (Ohio EPA) submitted a request on December 22, 2006, and supplemented it on March 9, 2007, for redesignation of the Toledo, Ohio area (Lucas and Wood Counties) to attainment for the 8-hour ozone

standard. The submission also includes a maintenance plan that provides for continued attainment through 2018. On June 12, 2007, EPA proposed to approve this submission. EPA provided a 30-day review and comment period. One comment, from BP Products, North America Inc., was received supporting EPA's proposal. Today, EPA is approving Ohio's request and corresponding State Implementation Plan (SIP) revision. In so doing, EPA is making a determination that the Toledo, Ohio area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2004-2006 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Preliminary 2007 air quality data show that the area continues to attain the 8-hour ozone standard. EPA is approving the maintenance plan for this area and is redesignating the area to attainment. Finally, EPA is approving, for purposes of transportation conformity, the motor

vehicle emission budgets (MVEBs) for the years 2009 and 2018.

**DATES:** This final rule is effective on August 9, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-0001. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael

G. Leslie, Environmental Engineer, at (312) 353-6680 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Leslie, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, [leslie.michael@epa.gov](mailto:leslie.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the following, whenever “we,” “us,” or “our” are used, we mean the United States Environmental Protection Agency.

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#### I. What Is the Background for This Rule?

The background for today's action is discussed in detail in EPA's June 12, 2007, proposal (72 FR 32246). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness, as determined in accordance with Appendix I of part 50.

Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and that it meets the other CAA redesignation requirements in section 107(d)(3)(E).

The Ohio EPA submitted a request on December 22, 2006, and supplemented it on March 9, 2007, for redesignation of the Toledo, Ohio area, which includes Lucas and Wood Counties, to attainment for the 8-hour ozone standard. The request included three years of complete, quality-assured data for the period of 2004 through 2006, indicating that the 8-hour NAAQS for ozone had been achieved. Preliminary 2007 air quality data show that the area continues to attain the 8-hour ozone standard. The data satisfy the applicable CAA requirements discussed above. The June 12, 2007, proposed rule provides a detailed discussion of how Ohio met these requirements.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04-1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, contingent on an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment

to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

#### II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period. One comment, from BP Products, North America Inc., was received supporting EPA's proposal.

#### III. What Are Our Final Actions?

EPA is taking several related actions for the Toledo, Ohio area. First, EPA is making a determination that the Toledo, Ohio area has attained the 8-hour ozone standard. EPA is approving Ohio's maintenance plan SIP revision for the Toledo, Ohio area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Toledo, Ohio area in attainment of the 8-hour ozone NAAQS through 2018 by ensuring that the 2018 Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO<sub>x</sub>) emissions are less than 2004 emissions, the attainment year. EPA is also approving the State's request to change the legal designation of the Toledo, Ohio area from nonattainment to attainment of the 8-hour ozone NAAQS. Finally, as supported by and consistent with the ozone maintenance plan, EPA is approving the 2009 and the 2018 VOC and NO<sub>x</sub> MVEBs for the Toledo, Ohio area. The 2009 MVEBs are 18.99 tons/day of VOC and 33.75 tons/day for NO<sub>x</sub>. The 2018 MVEBs are 11.20 tons/day of VOCs and 14.11 tons/day for NO<sub>x</sub>.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise

apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction,” and section 553(d)(3) which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today’s rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today’s rule relieves the State of planning requirements for these 8-hour ozone nonattainment areas. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

#### IV. Statutory and Executive Order Review

##### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

##### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant energy action,” this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

##### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule

will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

##### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

##### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

##### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

##### *National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

##### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### *Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

#### List of Subjects

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: July 31, 2007.

Steve Rothblatt,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart 1885—Ohio**

■ 2. Section 52.1885 is amended by adding paragraph (ff)(6) to read as follows:

**§ 52.1885 Control strategy: Ozone.**

\* \* \* \* \*

(ff) \* \* \*

(6) On December 22, 2006, and supplemented on March 9, 2007, the State of Ohio submitted a redesignation request and maintenance plan for the Toledo area, including Lucas and Wood Counties. The maintenance plan for this area establishes motor vehicle emission budgets (MVEB) for 2009 and 2018. The 2009 MVEBs are 18.99 tons/day of Volatile Organic Compounds (VOC) and

**OHIO—OZONE (8-HOUR STANDARD)**

33.75 tons/day for Oxides of Nitrogen (NO<sub>x</sub>). The 2018 MVEBs are 11.20 tons/day of VOCs and 14.11 tons/day for NO<sub>x</sub>.

**PART 81—[AMENDED]**

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. Section 81.336 is amended by revising the entry for Toledo, Ohio area: Lucas and Wood Counties in the table entitled “Ohio—Ozone (8-Hour Standard)” to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *	*	*	*	*
Toledo Area: Lucas County .....	08/09/07	Attainment		
Wood County				
* * * * *	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

\* \* \* \* \*  
[FR Doc. E7-15474 Filed 8-8-07; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA-R04-SFUND-2007-0613; FRL-8451-4]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final notice of deletion for the Rochester Property Superfund Site from the National Priorities list.

**SUMMARY:** EPA Region 4 is publishing a direct final notice of deletion of the Rochester Property, Superfund Site (Site), located in Travelers Rest, South Carolina, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC) because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final notice is effective October 9, 2007 without further notice, unless EPA receives adverse comment by September 10, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final notice in the **Federal Register** and inform the public that the notice will not take effect.

**ADDRESSES:** Submit your comments, identified by EPA-R04-SFUND-2007-0613, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [webster.donna@epa.gov](mailto:webster.donna@epa.gov).
3. *Fax:* (404) 562-8788.
4. *Mail:* EPA-R04-SFUND-2007-0613, Superfund Remedial & Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier:* Donna K. Webster, Remedial Project Manager, Superfund Remedial & Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to EPA-R04-SFUND-2007-0613. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business